51 S.B.Civil Writ Petition No.4390/2002

Date of Order : 03-08-2004

HON'BLE MR. N.P.GUPTA,J.

Mr.Anil Vyas for Mr.S.D.Vyas , for the petitioner.

Mr.D.D.Thanvi, for respondents.

Mr.L.R.Upadhyay, Dy.G.A.

Heard learned counsel for the parties.

By this petition, the petitioner seeks declaration for prospecting license granted to private respondent to be void, and an inquiry, to be made by the appropriate authority of the police department for playing fraud upon the Government in obtaining prospecting license, and for applying for the area, which has already been held under mining lease by the petitioner company, and part is falling under forest land, and for the petitioner being compensated for the full value of the mineral excavated from the area taken under prospecting lease by M/s. J.K.White Cement?

The averments made in the writ petition are, that in village Thob, Tehsil-Pachpadra, Distt. Barmer, prospecting license was not required to be issued because the prosecting operations were undertaken by the Director of Mines & Geology Department of the State of Rajasthan, and also there was no question of granting any prospecting license to anybody else in the Thob area. In this respect, document Annex.2 has been produced. Then the petitioner's averment is that the petitioner company has applied for the mining lease in this area, and when the petitioner company applied for mining lease, the petitioner was asked to purchase the prospected area and the charges for prospecting were recovered from the petitioner company. For this, a reference is made to Annex.3,

which shows that this is an order dated 14.6.1989, whereby the petitioner's application for grant of mining lease, moved on 18.4.88, has been rejected forfeiting the application fee. Then it is further alleged that Government by letter dated 14.6.89 asked the petitioner company to submit the requisite document for grant of mining lease for Thob II, selenite deposits and since the previous rejection was passed on incorrect factual positions, for which a protest was lodged by the petitioner company and mining lease was granted for Thob I deposits. It is further alleged that application of lease was rejected of the petitioner twice, but after correct factual position, the same was granted, and the State Government asked the petitioner company to purchase prospecting right, and thereafter lease was granted for the deposits in Thob I and Thob II. Then it is alleged in para no.8 that petitioner company came to know that a prospecting license has been granted to M/s. J.K.White Cement vide Annex.4, which is said to be a private company, who could not be granted for the simple reason that the area had already been prospected and the prospecting right was held with the petitioner, and as such, petitioner has got the priority.

Broadly, it is on these averments, it is contended, that when the prospecting licence has already been granted to the petitioner company, then even according to law, if a Government company is there for prospecting license, then the same should not be granted to private party. Ex.3 is the document by which application for mining lease was rejected, and Ex.4 is a document by which prospecting license was granted to the respondent no.2 for two years. Then Annex.6, being the communication sent on behalf of petitioner to the State Government, giving the facts eloberatly, purporting to be a notice, shows an entirely different picture.

To say the least, the fact pleaded in the writ petition, by the petitioner, and subsequent facts, as discussed in the writ petition, if considered on the basis of document, produced by petitioner, gives an utterly confusive picture apart from not disclosing the

right of petitioner to ventilate the grievance by way of writ petition filed in the year 2002, i.e. 23.10.2002 to be precise. It may be observed that the petitioner had his remedies by way of revision before Central Government against whatever orders, which petitioner was aggrieved of. Whatever may have been the proper remedy for grant of mining lease, or to challenge the grant of prospecting license to anybody else, or the like, but then in my view , writ petition, as filed on 23.10.02, cannot be entertained. The same is, therefore, dismissed summarily.

(N.P.GUPTA),J.

Srawat/-